

REMARKS

Claims 19-32 are pending in the application. Claims 1-18 and 33 have been canceled and Claims 19-21 and 32 have been amended. Bases for the amendments can be found throughout the written description, drawings, and claims as originally filed and as such, no new matter has been presented.

Applicant notes that the Examiner has inadvertently indicated that only Claims 1-31 were pending in the application in the above-referenced Office Action and had indicated that Claims 1-18 are withdrawn. Applicant further notes that Claims 1-33 were pending in the application and that the Examiner did not indicate that Claim 33 had also been withdrawn or examine Claim 32 on the merits. In accordance with the response filed July 31, 2007, Applicant has assumed that Claim 33 was withdrawn and has canceled the claim.

The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 21-27 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully rendered moot.

Applicant notes that Claim 21 has been amended to depend from Claim 20 (rather than Claim 19) so as to provide antecedent basis for the latch element. Applicant notes that Claims 22-27 were rejected for incorporating the error of Claim 21 by reference. In view of the amendment to Claim 21 and the above remarks, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 21-27 under 35 U.S.C. § 112, second paragraph.

REJECTION UNDER 35 U.S.C. § 103

Claims 28-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Grave (U.S. Pat. No. 2,030,367) in view of "Metro Vac N' Blo" and Huberman (U.S. Pat. No. 4,405,158). This rejection is respectfully traversed.

Applicant submits that the Office has not presented a prima facie case of obviousness in that the non-patent literature employed by the Office in formulating the rejection does not appear to be prior art under 35 U.S.C. §102. Applicant notes that the print out of the web page is dated October 12, 2007 and that the Office has provided no information or evidence concerning the Office's basis for asserting that either the print out or the depicted vacuum constitute prior art under 35 U.S.C. §102. As such, it appears that the Office is relying on the copyright notice at the bottom of the page (i.e., ©1997-2007 Vacuums Unlimited). Applicant notes that a search conducted on <http://www.archive.org/web/web.php> (i.e., the Internet archive or "wayback machine") for archived pages of the www.govacuum.com web site. The search indicates that Vacuums Unlimited did not market such vacuum in prior to February 26, 2003. Consequently, neither the print out nor the web site itself appear to be prior art.

The undersigned attorney contacted the Examiner to discuss this situation in a telephonic conference that was conducted the morning of January 16, 2008. The Examiner acknowledged that the Metro Vac N' Blo non-patent literature was not prior art and mentioned that he could substitute another reference. Unfortunately, the Examiner was not able to identify any other prior art reference that could be substituted for the Metro Vac N' Blo non-patent literature.

Additionally, Applicant notes that Claims 19 and 32 specify that "the relief aperture is formed on a forward face of the hollow body portion, the forward face being oriented relative to the coupling portion such that when the relief aperture is closed by a thumb of a person

using the portable vacuum, at least a portion of a force exerted by the thumb to close the relief aperture at least partially urges the inflator nozzle in a direction toward the second end of the hose.” Configuration in this manner permits the user of the vacuum/nozzle combination to use their thumb to both control the amount of air that is discharged through the tapered male connector, as well as to aid in retaining the nozzle on the second end of the hose. Applicant notes that while the air filler adapter shown in Figure 2 of Huberman appears to employ an opening (57), Huberman does not teach or suggest a nozzle having a relief aperture that is formed on a forward face of a hollow body portion that is oriented so that when the relief aperture is closed by the thumb of a person using the portable vacuum, at least a portion of a force exerted by the thumb to close the relief aperture at least partially urges the filler adapter toward a hose.

In view of the above remarks, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of Claim 19 under 35 U.S.C. §103(a).

Applicant notes that as Claims 28-31 depend from Claim 19, these claims should overcome the rejection under 35 U.S.C. §103(a) for at least the reasons expressed above for Claim 19.

ALLOWABLE SUBJECT MATTER

The Examiner states that Claims 20-27 would be allowable if rewritten in an independent form and amended to cure the rejection under 35 U.S.C. §112, second paragraph. Applicant has amended Claims 20-27 to include the limitations of the base claim and any intervening claims. Therefore, Claims 20-27 should now be in condition for allowance.

INFORMATION DISCLOSURE STATEMENT

Applicant notes that the Examiner has stated that the Information Disclosure Statement filed April 12, 2004 failed to comply with 37 C.F.R. §1.98(a)(2). Applicant notes the following:

German reference 1 949 328 appears to disclose a vacuum with an adapter for directing the discharge flow of the vacuum into another device (see, e.g., Fig. 2);

German Utility Model DE 41 35 436 appears to disclose a vacuum with various tools that employ the discharge air flow from the vacuum;

An abstract of German Utility Model DE 39 41 039 was provided;

European patent EP 0 893 962 appears to disclose a vacuum with dirt cup having a clear window;

German Utility Model DE 30 38 298 and German reference G 84 17 091 appear to disclose vacuum cleaners; and

German patent DE 197 36 596 appears to disclose a hand-held vacuum having an exhaust filter (17) and an assembly with a battery and a motor.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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